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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.1101 OF 2004

APPELLANT (In Jail) — ANAND @ BALLU

Vs

RESPONDENT — STATE OF CHHATTISGARH.

POST FOR JUDGMENT ON 1st June, 2007

Sd/-
DHIRENDRA MISHRA
Judge

31.5.2007

(36)

HIGH COURT OF CHHATTISGARH AT BILASPUR
CRIMINAL APPEAL NO.1101 OF 2004

APPELLANT (In Jail)	Anand @ Ballu, S/o Shri Firanta, aged about 28 years, resident of Village Tarra, P.S. Rajim, District Raipur.
	Vs
RESPONDENT	State of Chhattisgarh.

Present:

Mr. Shravan Kumar Chandel, Advocate for appellant.

Mr. Vinay Harit, Dy. Advocate General for the State.

J U D G M E N T

(Delivered on 1.6.2007)

Dhirendra Mishra, J:

1. This appeal is directed against the judgment dated 21st October, 2004 passed in Sessions Trial No.188/04 by learned 10th Additional Sessions Judge, Raipur whereby the appellant has been convicted under Sections 376 (1) & 342 of the I.P.C. and sentenced to undergo R.I. for 7 years and to pay a fine of Rs.100/-, in default of payment of fine to further undergo R.I. for one month & R.I. for three months respectively. Both the sentences are directed to run concurrently.

2. Case of the prosecution, in brief, is that on 12.5.2004 the prosecutrix lodged a report (Ex.P-1) in the Police Station Rajim mentioning therein that she resides at Village Tarra with her husband, today at about 11.30 a.m. her husband had gone on his routine work and she had also gone out of village for cutting Kandi. At that time, the accused, who resides nearby, called her and as soon as she reached there, he caught hold of her hand and dragged her inside his house. When she tried to shout, he gagged her mouth by his hand and after taking her inside the house he made her lie on the floor and forcibly raped her. He further warned her

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that if she disclosed this fact to her husband, then she should be ready for the consequences. After being released by the accused she returned to her home and disclosed the incident to her husband Govind as also to Leela Bai, Dashoda Bai & Amrika Bai, who were present there. On the basis of above report, the offence under Sections 342 & 376 of the IPC was registered against the accused/appellant.

3. During investigation, the prosecutrix was sent for medical examination to Community Health Centre, Rajim where Dr. (Smt.) Snehlata Humne (PW-9) examined her and gave her report of Ex.P-7. Peticoat & torn blouse belonging to the prosecutrix were taken into possession vide Ex.P-3. Underwear of the accused was taken into possession vide Ex.P-6. Seized Peticoat was sent for medical examination to the doctor for his opinion regarding presence of human spermatozoa, who vide her report of Ex.P-8 advised that the same be sent for chemical examination. Accused was also sent for medical examination vide Ex.P-9A and Dr. Gopal Kela (PW-10) examined him and gave his opinion vide Ex.P-9 to the effect that the accused was competent to perform sexual intercourse. Peticoat of the prosecutrix, underwear of accused and slides of prosecutrix were sent for chemical examination to Forensic Science Laboratory, Raipur vide Ex.P-15 from where report (Ex.P-16) was received in which human spermatozoa was found on the slides.

4. After completing investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Gariyaband, who in turn committed the case to the Court of Sessions Judge, Raipur and the same was received by the Additional Sessions Judge on transfer for trial, who framed charges under Sections 376 & 342 of the IPC against the accused. The accused abjured his guilt. The prosecution in order to

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establish the charges against the accused examined 13 witnesses and thereafter the statement of accused was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and pleaded innocence & false implication due to enmity. He also examined two defence witnesses namely Khuman (DW-1) & Ishwar (DW-2). Learned trial Court after hearing learned counsel for the respective parties, convicted & sentenced the appellant as mentioned above.

5. Learned counsel for the appellant submits that the appellant has been framed in a false case due to previous enmity. He further submits that defence witness Ishwar has categorically stated that there was a quarrel between the accused and family members of Govind and 15 to 20 days prior to the date of incident Govind and his brother had gone to the house of accused armed with lathi and had quarreled with him. The accused resides in his house with his wife and minor children. Incident is alleged to be of 11.30 a.m. in the day and the place where offence alleged to have been committed is open from all sides. Learned counsel submits that there are material omissions in the statement of witnesses which makes their statements doubtful and unworthy of reliance, however, learned trial court has ignored all these aspects. Therefore, in these circumstances the conviction of the appellant cannot be sustained.

6. On the other hand, learned Dy. Advocate General for the State has supported the judgment of trial court and submitted that version of the prosecutrix is duly corroborated by independent witnesses as also by medical evidence.

7. I have heard learned counsel for the parties.

8. In order to establish the charges against the appellant the prosecution has examined the prosecutrix as PW-2, who has stated

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in her deposition that on the date of incident at about 11.30 hrs she had gone to cut Kandi, at that time the accused called her for picking-up onion bag. On her refusal, he again requested her, whereupon, she went near his house and at that time the accused caught hold of her hand and dragged her inside his home. When she started shouting, he gagged her mouth with his hand, thrown her on the floor and raped her. He had clasped her both hands from back side, she had fallen head first as a result of which she became momentarily unconscious. After rape when she threatened the accused that she shall disclose this fact to her husband, the accused threatened her of the consequences. Thereafter she returned to her home weeping and narrated the incident to her husband as also to Leela Bai, Dashoda Bai & Amrika Bai. She has further stated she lodged the report (Ex.P-1) in the Police Station Rajim and thereafter she was medically examined, her petticoat was seized vide Ex.P-3 and spot map (Ex.P-3) was prepared in her presence. This witness has been cross-examined at length in which she has admitted that the house of accused is 5-6 houses away from her house. Pardeshi, Radhe, Triloki, Teji, Jibrakhan, Prem etc live near the house of accused. She has admitted that prior to the incident she never visited the house of accused nor the accused came to her house and she never talked to him. The place where incident occurred is an animal barn and the surface was uneven, however, she did not receive any injury over her back or head after she was thrown on the floor. She has further stated that she could not shout as the accused had gagged her mouth by one hand and caught her both hands by another hand. Minor omissions in relation to breaking of bangles, tearing of blouse, becoming unconscious etc. have been pointed out by the defence in the cross-examination, however, the omissions present in the statement of this witness are trivial in nature.

9. Amrika Bai (PW-1) has stated that she resides beside the house of prosecutrix, on the date of incident at about 11-12.00 hrs the prosecutrix was weeping in her home whereupon she went to her house and enquired, on which she has stated that the accused has raped her. Leela Bai (PW-3) has stated that on the date of incident at about 11.30 a.m. when she was returning to her home at that time she saw the prosecutrix returning, prosecutrix asked her for water which she was carrying with her in a pot and at that juncture she had told that the accused had raped her. Yashoda Bai (PW-4) has also corroborated the statement of the prosecutrix that after the incident she met her and informed that accused has raped her at the time when she had gone to cut Kandi.

10. Govind (PW-5), husband of prosecutrix, has stated that on the date of incident he had gone on his work of Barber, at about 11-11.30 a.m. he returned to his home and found that his house was locked. At that time his wife came running and on being asked, she told that she had gone to cut Kandi towards barren land, at that time accused Anand Patel called her to help him in picking up the onion bag. When she went near the accused he caught hold of her hand and dragged her inside the house, when she tried to shout he gagged her mouth by his hand and thereafter raped her by lying down her on his floor. This fact was also narrated by her to other witnesses and thereafter report was lodged.

11. Thus, from the above evidence the version of the prosecutrix stands corroborated. Apart from corroboration of the statement of the prosecutrix from the statement of these witnesses, her statement also stands corroborated from the statement of Dr. (Smt.) Snehlata Humne (PW-9), who examined the prosecutrix on the date of incident itself and found following injuries on her person.

a. abrasion on the right side of chest in the size of 2x1 cm.

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b. abrasion on the right side of thigh in the size of 7x2 cm in the area of 5 cm.

c. abrasion over right hand wrist in the size of 3x1 cm reddish in colour.

d. She was complaining pain on her right thigh.

e. No signs of injuries were present near private part, however, labia majora was thick & wide apart.

f. Labia minors are thin, not covered with labia majora.

g. Hymen is ruptured and its margins were fimbriated.

Two slides of vaginal secretion were also prepared and given to Constable after sealing and the doctor has opined that it can be said that the victim was raped. As per report of FSL, the vaginal slides of the prosecutrix contained human spermatozoa

12. So far as the defence of the appellant that he has been implicated in the false case due to animosity is concerned, the defence has not been able to bring on record the evidence of enmity of such a nature for which Govind (PW-5), husband of prosecutrix, would involve the honour of his own wife at stake. The version of defence witness Ishwar that there is an old quarrel between accused and the family members of Govind is vague in nature, as he does not mention any reason for the said quarrel.

13. Thus, on the basis of aforesaid analysis, I am of the considered opinion that the prosecution has been able to establish the charges against the appellant beyond reasonable doubt and the trial court has not committed any illegality or infirmity in convicting & sentencing the appellant by the impugned judgment.

14. In the result, the appeal of the appellant has no substance, the same is liable to be dismissed and it is accordingly dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-